

Reserved
(On 18.09.2018)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 12th day of October 2018

Original Application No. 330/01760 of 2010

Hon'ble Mr. Gokul Chandra Pati, Member – A
Hon'ble Mr. Rakesh Sagar Jain, Member – J

Narendra Pratap Pandey, S/o Shiv Nath Pandey, R/o 220 – B Brij Enclab, Sunderpur, Varanasi.

By Adv: Shri Vikas Budhwar . . . Applicant

V E R S U S

1. Union of India, through its General Manager, North Eastern Railway, Gorakhpur.
2. General Manager (Personnel), North Eastern Railway, Gorakhpur.
3. Divisional Railway Manager, North Eastern Railway, Lahartara, Varanasi.
4. Chief Medical Director, North Eastern Railway, Gorakhpur.
5. chief Medical Superintendent, North Eastern Railway, Varanasi.

By Adv: Shri Sher Bahadur Singh . . . Respondents

O R D E R

By Hon'ble Mr. Gokul Chandra Pati, Member – A

By way of the instant OA, the applicant has prayed for quashing the impugned orders dated 31.05.2010 (Annexure No.19), 12.04.2006 (Annexure No. 20) and 04.02.2000 (Annexure No. 8) coupled with prayer for a direction to the respondents to regularize the applicant on the post of Compilation Clerk w.e.f. 04.02.2000 in pay scale of Rs. 1400-2300 with the revised scale of Rs. 4500-7000 or pay scale Rs. 1200-2040, revised to Rs. 4500-7000 (now revised to Rs. 9300-34,800 as per 6th CPC Report) with all benefits admissible to the said post.

2. The facts of the case in brief are that applicant was initially appointed as Field Worker (Male) in Family Welfare Section, North Eastern Railway, Varanasi in the pay scale of Rs. 950-1400 on 01.08.1986. He appeared in a suitability test held on 24.06.1989 pursuant to the notification dated 05.06.1989 (Annexure No. 1) for promotion to the post of Senior Clerk in pay scale Rs. 1200-2040, in which he was declared successful vide notification dated 28.06.1989 (Annexure No. 2). He was promoted to the said post vide order dated 06.07.1989 (Annexure No. 3). The applicant vide order dated 01.01.1991 (Annexure No. 4) was directed to look after the post of Compilation Clerk in pay scale of Rs. 1400-2300 till the said post was not filled in and vide order dated 11.05.1992 (Annexure No. 5), he was allowed the officiating allowances for the said post.

3. After implementation of 5th CPC, since the pay scale of senior clerk was revised to Rs. 4500-7000 from Rs. 1200-2040 vide letter dated 10.10.1997 issued by the Railway Board (Annexure No. 7), the applicant's pay should have been fixed on pay scale of Rs. 4500-7000 as he was working as senior clerk w.e.f. 06.07.1989. Since it was not allowed, the applicant filed OA No. 1811/1994 and 804/1998 before this Tribunal seeking his regularization to the post of Compilation Clerk, but since the respondents vide order dated 04.02.2000 (Annexure No. 8) cancelled the order dated 11.05.1992 by giving him the pay scale of Rs. 4000-6000 in place of Rs. 4500-7000, both the OAs were dismissed as infructuous on the ground that fresh cause of action had arisen. It is stated that the respondents are taking shelter of a misprinting at page 51 of Avenue and Promotional Chanel of Non-Gazetted Staff, to fix salary of Senior Clerk at Rs. 4000-6000 by misquoting the Board's Circular dated 08.04.1999 (Annexure No. 9).

4. It is further stated that OA No. 1282/2000 was filed by the applicant against the order dated 04.02.2000, in which vide interim order dated 05.01.2001 (Annexure No. 10) the pay of the applicant in pay scale of Rs. 4500-7000 was protected. This OA was finally disposed of vide order dated 25.05.2009 (Annexure No. 17) and in compliance to the directions contained in the order, the applicant preferred the representation dated

04.07.2009 (Annexure No. 18), which was rejected vide impugned order dated 31.05.2010 (Annexure No. 19).

5. Aggrieved, the applicant has filed this OA mainly on the following grounds : -

- i. The impugned order dated 31.05.2010 (Annexure No. 19) is arbitrary and illegal as the applicant was promoted to the post of Senior Clerk w.e.f. 06.07.1989 after qualifying the suitability test. Thereafter, the applicant was allowed to work as Compilation Clerk in pay scale of Rs. 1400-2300 and continued to work on the said post till 04.02.2000.
- ii. The Division has the power to promote the applicant as per the letter dated 14.02.1990 sent by the Senior Divisional Personnel Officer to Head Quarter, North Eastern Railway, Varanasi Division, which specifically provides that the post in question is controlled by the Division, hence the contention of the respondents in the impugned order that the Division has no power to promote the applicant is incorrect and unjustified.
- iii. In view of the Railway Board Circular dated 16.10.1997 (Annexure No. 7), the pay scale of Rs. 4500-7000 of Senior Clerk is applicable to the applicant being Ministerial staff of Family Welfare Department (vide para 4.10 of the OA).
- iv. The action of the respondent No. 3 is violative of principle of Estoppel and Acquisitio because after more than 20 years, it is stated in the impugned order that the applicant ought not to have been called to appear in the suitability test for promotion to the post of Senior Clerk and he was wrongly allowed the promotion.
- v. The impugned order dated 04.02.2000 granting pay scale of Rs. 4000-6000 to the applicant even when he is working as compliant clerk is arbitrary and illegal.

vi. The avenue of promotional channel of non-gazetted staff was enforced by the North Eastern Railway in January, 2001 while the applicant was promoted to the post of Senior Clerk on 06.07.1989 (vide para 4.15 of the OA).

vii. The action of the respondents is discriminatory because the pay scale of Rs. 4500-7000 is being given to one Shri Ram Kumar Agrahari, Senior Clerk in Family Welfare Department in Eastern Railway, Danapur Division and Shri K.K. Pandey, Senior Clerk, Family Welfare Department, N.E. Railway, Allahabad (Annexure No. 11), Shri B.D. Sharma who are similarly situated employees in other Division (Annexure No. 11, and 12). Vide letters dated 21.01.2000 (Annexure No. 22) and 14.02.1990 (Annexure No. 23) the Railway authorities of the Division have informed that there is no illegality in promotion of the applicant (vide para 4.28 of the OA). The applicant was directed to work as Commercial Clerk (Pay scale Rs. 3200 – 4900), but the applicant was allowed the scale of Rs. 4000 – 6000 vide order dated 12.04.2006 (Annexure No. 20 to the OA).

6. The respondents have filed Counter Reply (in short CR) stating that in the medical department, all the posts in respect of family welfare department are headquarter controlled posts, but the Divisional Authority allowed ad-hoc promotion to the applicant as Senior Clerk in pay scale of Rs. 1200-2040 / 4500-7000. In family welfare department, the grade in Ministerial cadre is Rs. 1200 – 2040 / 4000 – 6000. To correct this situation, the order dated 04.02.2000 was issued with approval of the competent authority. The applicant after surrendering the post in medical department in respect of family welfare organization was adjusted as Commercial Clerk in pay scale Rs. 3200-4900/- (vide para 5 of the CR). It is stated that vide order dated 01.01.1991 (Annexure No. 4 to the OA), the applicant was directed to look after the work of Compilation Clerk till regular selection is made, which does not confer any right upon the applicant for claiming the benefit of higher pay scale. It is further submitted that since the family welfare organization is a headquarter control post and an action or decision taken in this regard without the approval of the

General Manager or medical authority is illegal, hence the order dated 04.02.2000 was passed by cancelling the order dated 11.05.1992 (Annexure No. 5 to the OA), by which the applicant was allowed the pay scale of Compilation Clerk Rs. 1400-2300 (4500-7000). It is further submitted that the grade of Ministerial Cadre and the Family Welfare Cadre are different and the benefit given to the applicant is against the rules relating to avenue of promotion in respect of the Family Welfare Organization (Annexure CR-3). It is submitted that as per the avenue of promotion, the Senior Field Worker in the Family Welfare Organization in the pay scale of Rs. 4000-6000 and not Rs. 4500-7000.

7. The applicant has filed Rejoinder reiterating the facts stated in the OA. The applicant has referred to Annexure R-1, which is Railway Board letter dated 08.04.1999 alongwith copies of AVC of 4th and 5th CPC, demonstrating that Senior Clerk of Family Welfare of medical department has always been kept separate from clerical cadre of medical department.

8. Heard learned counsels for both sides at length. Learned counsels for both sides have also filed their written arguments mainly reiterating the averments in their respective pleadings. We have also considered the pleadings and documents placed on record. Important questions that are required to be decided in this case are:-

- i. Whether the promotion of the applicant to the post of Senior Clerk by order dated 06.07.1989 (Annexure No. 3 to the OA) was given with approval of the competent authority.
- ii. Whether the order dated 11.05.1992 allowing the benefit of the pay scale applicable to the post of Compilation Clerk to the applicant is incorrect, as stated by the respondents.

9. The impugned and speaking order dated 08.09.2010 (Annexure No. 19) stated that the competent authority passed the order dated 04.02.2000 (Annexure No. 8 to the OA) to fix the pay scale of the applicant at Rs. 4000 – 6000 in place of the pay scale of Rs. 4500 - 7000 being enjoyed by the applicant. It is stated that this is as per the Railway Board Circular dated 08.04.1999 and the reduction in pay scale is due to the fact that the Divisional Authorities had allowed promotion to Senior

Clerk to the applicant working in Family Welfare department for which the headquarter is the controlling authority. It was further stated that the applicant was wrongly allowed the revised pay scale of Rs. 4500 – 7000, whereas he was entitled for Rs. 4000 – 6000 as Senior Clerk in the Medical department.

10. We have carefully gone through the reasons given in the impugned order dated 08.06.2010 as to why the applicant was not eligible for the revised pay scale of Rs. 4500 – 7000 vide order dated 11.05.1992 which was cancelled by the respondents vide order dated 04.02.2000, no reason was furnished to the applicant who was being allowed a higher pay scale since 1992 without any objection for the higher authorities of the headquarter of the respondents. Vide letter dated 21.01.2000 (Annexure No. 22 to the OA) it was informed that the applicant was allowed the pay scale of Rs. 4500 – 7000 since he was officiating against the vacant post of Compilation Clerk with higher pay scale of Rs. 4500 – 7000. It is also stated in the letter dated 14.02.1990 that promotion to Senior Clerk has been rightly given since these posts were declared to be controlled by the division.

11. It is also seen that although the respondents have taken a plea that the promotion to Senior Clerk was wrongly given to the applicant. Taking into consideration the contentions in the letter dated 14.02.1990 (Annexure No. 23 to the OA) and the fact that the applicant has not been reverted from the post of Senior Clerk we are unable to accept the averments of the respondents that he was not entitled for promotion as Senior Clerk which was allowed by the divisional authorities. Hence, the question at para 8 (i) is answered accordingly.

12. Next question is whether the applicant is eligible for the pay scale of Rs. 4500 – 7000 which he was getting due to his officiating promotion as Compilation Clerk vide order dated 01.01.1991 (Annexure No. 4 to the OA). It is not the case of the respondents that the said post was filled up by another person as per rules. Hence, from the record, it is clear that the order dated 01.01.1991 was valid when the impugned order dated 04.02.2000 was passed cancelling the order dated 11.05.1992 by which the revised pay scale of Rs. 4500 – 7000 was allowed to the applicant for

his functioning as Compilation Clerk on officiating basis since 01.01.1991 and the applicant was enjoying such higher pay scale since 11.05.1992 till the said order was cancelled by order dated 04.02.2000, which does not mention any reason.

13. Regarding the allowance / pay to which a railway employee is entitled in case of adhoc/officiating promotion, has been specified in para 913 of the IREM Volume-I, which states as under:-

“913. Officiating Allowance

(i) The officiating allowance in respect of running staff officiating in running post shall be regulated as under:

(a) When running staff are put to officiate in a "running post" for 30 days or less, they shall be entitled to pay as admissible in the lower grade plus Running Allowance at the rates and on the condition applicable to the higher grade in which they officiate enhanced by 15% (except in the case of Second Firemen put to officiate as First Firemen and Engine Cleaners put to officiate as Second Firemen for whom the enhancement will be by 30% of the kilometrage actually performed for every such higher grade.

(b) When running staff are put to officiate in a "running post" for more than 30 days, their pay in the higher post shall be fixed under the normal rules.

(ii) (a) When running staff are put to officiate in a stationary post for more than 30 days, their pay will be fixed on the basis of their pay in the lower post plus 30% thereof representing the pay element of the Running Allowance.

(b) The fixation of pay of running staff put to officiate in a stationary post for a period of 30 days or less, shall continue to be regulated in terms of para 911 (ii) (a) of Indian Rail way Establishment Manual.

(iii) In cases where the officiating arrangement is initially approved for periods exceeding 30 days the normal rules of fixation of pay will apply; where the period is initially for 30 days, the enhanced kilometrage allowance drawn upto 30 days should be allowed to stand but payments for periods beyond 30 days should be in accordance with the rules for normal-fixation of pay on promotion.”

From above provisions of the IREM, it is clear that the applicant, who is working on adhoc / officiating basis on a higher post of compilation clerk by an order of the concerned authority, is entitled for the scale of pay as applicable for the post of Compilation clerk. Hence, the applicant was correctly allowed the benefit of the scale of Rs. 4500-7000 which is admittedly applicable for the post of Compilation clerk. The respondents, instead of filling up the post of Compilation clerk and without cancelling his adhoc / officiating promotion allowed to him vide order dated 01.01.1991, cannot disallow the benefit of the pay scale of Rs. 4500-7000 which was allowed to him vide order dated 11.05.1992 and such order dated 11.05.1992 was in accordance with the para 913 of the IREM.

14. It is not the case of the respondents that there are employees senior to the applicant who could have been considered for regular / officiating promotion as Compilation clerk in place of the applicant. Since the applicant had worked for more than 8 years on adhoc/officiating promotion to the post of Compilation clerk, it shows that he is senior enough to hold the post, which is a non-selection post as per the document enclosed by the respondents in the Annexure CR-3 to the Counter Reply. Hence, till the post of Compilation clerk is filled up regularly as per the rules, the applicant has a right for the post and to the pay scale attached to the said post and if the applicant is transferred to some other post in another department, then his officiating pay is to be protected unless it is withdrawn as per the rules. It is not explained by the respondents in their pleadings as to why the post has not been filled up in regular manner from 1991 till 2000 and what is the present status regarding filling up of the said post. In the written arguments filed by the respondents' counsel, nothing is mentioned about the status of filling up of the post of Compilation clerk against which the applicant was officiating vide order dated 01.01.1991.

15. In view of above discussions, we are of the considered opinion that the impugned order dated 04.02.2000 cancelling the order dated 11.05.1992 without cancelling the order dated 01.01.1991 after duly filling up the post of Compilation clerk as per the rules, is not sustainable under law. Similarly, the order dated 08.06.2010, rejecting the representation of the applicant in this regard, is also not sustainable for the reasons discussed above. Hence, the orders dated 04.02.2000 (Annexure No. 8 to the OA) and dated 08.06.2010 / 31.05.2010 (Annexure No. 19 to the OA) are set aside and quashed and the respondents are directed to extend all consequential benefits to the applicant including the benefit of the pay scale of Rs. 4500 – 7000 applicable for the post of Compilation Clerk unless it is withdrawn as per the rules. In addition appropriate modification of the order dated 12.04.2006 (Annexure No. 20 to the OA) shall also be considered by the respondents. This order shall be complied by the respondents within three months of receipt of a certified copy of this order.

16. In view of the above, the OA is allowed. There is no order as to costs.

(Rakesh Sagar Jain)

/pc/

Member (J)

(Gokul Chandra Pati)

Member (A)